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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SEAN BURKE and JAMES
POMERENE, Individually and on
Behalf of All Others Similarly
Situated,

Plaintiffs,

V.

CLEARVIEW AI, INC., a Delaware Corporation; HOAN TON-THAT, an Individual; RICHARD SCHWARTZ, an Individual; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 3:20-cv-00370-BAS-MSB

CLASS ACTION

FIRST AMENDED CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Sean Burke and James Pomerene (“Plaintiffs”), by their attorneys,
 2 bring this action individually and on behalf of all others similarly situated (the
 3 “Class”) against Defendants Clearview AI, Inc. (“Clearview”), Hoan Ton-That,
 4 Richard Schwartz, and DOES 1 through 10, inclusive (collectively, “Defendants”).
 5 Plaintiffs make the following allegations upon information and belief (except those
 6 allegations as to the Plaintiffs or their attorneys, which are based on personal
 7 knowledge), based upon an investigation that is reasonable under the
 8 circumstances, which allegations are likely to have evidentiary support after a
 9 reasonable opportunity for further investigation and/or discovery.

10 **NATURE OF ACTION**

11 1. The disturbing conduct at issue in this Complaint was highlighted in
 12 a letter by Senator Edward J. Markey to Clearview about its use of technology to
 13 collect, generate, and sell consumers’ biometric information without their consent:

14 “Widespread use of your technology could facilitate dangerous
 15 behavior and could effectively destroy individuals’ ability to go
 16 about their daily lives anonymously.”

17 “The ways in which this technology could be weaponized are vast
 18 and disturbing.”

19 2. As warned by Senator Markey, “[a]ny technology with the ability to
 20 collect and analyze individuals’ biometric information has alarming potential to
 21 impinge on the public’s civil liberties and privacy.” *Id.* Indeed, Defendants’ use of
 22 Clearview’s technology does just that and violates California’s and Illinois’s
 23 privacy protection statutes, among other laws.

24 3. Without notice or consent, Clearview illicitly “scraped” hundreds, if
 25 not thousands or more, websites, such as Facebook, Twitter, and Google, for over
 26 three billion images of consumers’ faces.¹ Clearview’s automated scraping for

27 ¹ Web “scraping” (aka web harvesting or web data extraction) is data scraping
 28 used for extracting data from websites. It is a form of copying, in which specific

1 images violated the policies of websites like Facebook and Twitter, the latter of
2 which specifically prohibits scraping to build facial recognition databases.
3 Unlawfully, Defendants stored billions of scraped images of faces in Clearview's
4 database, used its facial recognition software to generate biometric information
5 (aka a "Faceprint") to match the face to identifiable information, and then sold
6 access to the database to third-party entities and agencies for a commercial gain.

7 4. In clear violation of multiple privacy laws, Clearview sold for a profit
8 access to billions of consumers' Faceprints to law enforcement agencies and
9 private companies across the country, including in California. Consumers did not
10 receive notice of this violation of their privacy rights, and they certainly have not
11 consented to it – in writing or otherwise. Clearview and its customers, including
12 law enforcement and each of their employees, staff, and any number of other
13 people, may be able to access billions of consumers' identities, social connections,
14 and other personal details based on the Faceprint created and sold by Clearview.
15 As acknowledged by the co-director of the High-Tech Law Institute at Santa Clara
16 University, the “weaponization possibilities of this are endless.” Imagine a rogue
17 employee of one of Clearview’s customers who wants to stalk potential romantic
18 partners, a foreign government using it to discover information to use to blackmail
19 key individuals, or law enforcement agencies prying into the private lives of
20 citizens with no probable cause or reasonable suspicion. The “dystopian future” of
21 a mass surveillance state has arrived with the erosion of privacy for billions of
22 people, and Clearview is at the helm.

23 5. To redress the harms suffered, Plaintiffs, individually and on behalf
24 of The Class and sub-classes (as defined herein below) bring claims for: (1)
25 violation of California's Unfair Competition Law, Business & Professions Code

27
28 data is gathered/fetched and copied/processed from the web, typically into a
central local database or spreadsheet, for later use.

1 §17200, *et seq.* (“UCL”) (predicated on, *inter alia*, violation of the California
2 Consumer Privacy Act of 2018, California Civil Code §1798.100, *et seq.*
3 (“CCPA”) (on behalf of Plaintiff Burke and the CCPA Class, Commercial
4 Misappropriation Class, and Unjust Enrichment Class against all Defendants); (2)
5 violation of California Civil Code §3344(a) (“Commercial Misappropriation”) (on
6 behalf of Plaintiffs and the Commercial Misappropriation Class against all
7 Defendants); (3) unjust enrichment (aka “restitution” or “quasi-contract”) (on
8 behalf of Plaintiff Burke and the Unjust Enrichment Class against Defendant
9 Clearview); and (4) violation of the Illinois Biometric Information Privacy Act,
10 740 ILCS 14/1, *et seq.* (“BIPA”) (on behalf of Plaintiffs and the BIPA Class
11 against all Defendants).²

JURISDICTION

13 6. This Court has original jurisdiction over this action under 28 U.S.C.
14 §1332(a) as well as the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2),
15 as to the named Plaintiffs and every member of The Class, because the proposed
16 Class contains more than 100 members, the aggregate amount in controversy
17 exceeds \$5 million, and Class members reside in California and are therefore
18 diverse from Clearview. The Court has supplemental jurisdiction over Plaintiffs'
19 state law claims pursuant to 28 U.S.C. §1337(a).

20 7. This Court has personal jurisdiction over Plaintiffs because Plaintiffs
21 submit to the Court's jurisdiction for the purpose of this Complaint. This Court
22 has personal jurisdiction over Clearview because it does a substantial amount of
23 business in California, including in this District; is authorized to conduct business
24 in California, including in this District; and/or has intentionally availed itself of
25 the laws and markets of this District through the use, promotion, sale, marketing,
26 and/or distribution of its products and services at issue in this Complaint.

28 || 2 The Sub-Classes are defined below in Paragraphs 51-52 of the Complaint

1 Defendants' liability to Plaintiffs and the Class arises from and relates to
2 Defendants' conduct within the state of California. As set forth, *infra*, Defendants
3 acted within California to collect the biometric information of Plaintiffs and
4 persons throughout the United States. Defendants put this biometric information,
5 collected within the state of California, to commercial use throughout the United
6 States, including within the states of California and Illinois. Further, Defendants
7 harvest the biometric information of Plaintiffs and persons throughout the United
8 States, wherever that biometric information is harvested, and subsequently put that
9 biometric information to commercial use within the state of California. Thus,
10 Defendants have purposefully availed themselves of the benefits and protections
11 of the state of California in conducting their unlawful enterprise, which purposeful
12 availment constitutes sufficient minimum contacts with the state of California that
13 the exercise of personal jurisdiction over Defendants with regard to the claims of
14 Plaintiffs and the Class does not violate Due Process.

15 8. This Court has personal jurisdiction over Defendants Hoan Ton-That
16 and Richard Schwartz because, as set forth in more detail below, they conspired
17 with Clearview and the Co-Conspirators as defined herein below to further the
18 illegal scheme alleged in this Complaint, which directly targeted and impacted
19 thousands, if not millions, of California residents and citizens, including in this
20 District. Defendants Ton-That and Schwartz consented to, authorized, and directed
21 the business conduct at issue in California, including in this District and have
22 availed themselves of the laws and markets of this District.

23 9. Venue is proper in this District pursuant to 28 U.S.C. §1331(b),
24 because a substantial part of the events or omissions giving rise to the claims
25 occurred in this District. Venue is also proper under 18 U.S.C. §1965(a), because
26 Clearview transacts a substantial amount of its business in this District.
27 Alternatively, venue is proper under 28 U.S.C. §1331(b)(3) because this Court has
28 personal jurisdiction over Defendants.

THE PARTIES**Plaintiff Sean Burke**

10. Plaintiff Sean Burke is a natural person and over the age of eighteen.
11 Plaintiff Burke is, and at all relevant times has been, a resident and citizen of San
12 Diego, California.

13. Throughout the relevant period of this Complaint, numerous
14 photographs that include images of Plaintiff Burke's face were uploaded to various
15 internet-based platforms and websites, including on Facebook, Twitter, Instagram,
16 Google, Venmo, and/or YouTube.

17. Based on information and belief, Clearview "scraped" images of
18 Plaintiff Burke's face from internet-based websites, in violation of several of the
19 websites' terms of use and stored them in its database. Based on information and
20 belief, in order to scrape Plaintiff Burke's image, Clearview's web scraper
21 harvested information stored on servers in various states, including California and
22 Illinois. Clearview also targeted companies that are at home in the state of
23 California to perform its unlawful scraping. Clearview's software application then
24 applied facial recognition software to the images of Plaintiff Burke's face,
25 calculated his unique physical characteristics, and generated a biometric template
therefrom. Clearview generated biometric information (a "Faceprint") enabling
the identification of Plaintiff Burke, in direct violation of the laws identified in this
Complaint, including the BIPA and CCPA. Clearview then sold, marketed,
advertised, or otherwise made commercial use of access to its database containing
Plaintiff Burke's photograph and Faceprint to third-party entities throughout the
United States generally, and in the states of California and Illinois particularly, for
a commercial monetary gain in an amount to be determined at trial.

13. Plaintiff Burke never consented, agreed, or gave permission – written
or otherwise – to Clearview to collect, capture, purchase, receive through trade,
obtain, sell, lease, trade, disclose, redisclose, disseminate, or otherwise profit from

1 or use his photograph, likeness, and biometric information and identifiers.
2 Likewise, Clearview never informed Plaintiff Burke by written notice or otherwise
3 that Plaintiff Burke could prevent Clearview from collecting, capturing,
4 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,
5 rediscovering, disseminating, or otherwise profiting from or using his photograph,
6 likeness, and biometric information and identifiers. Similarly, Plaintiff Burke was
7 never provided with an opportunity to prohibit or prevent Clearview from
8 collecting, capturing, purchasing, receiving through trade, obtaining, selling,
9 leasing, trading, disclosing, rediscovering, disseminating, or otherwise profiting
10 from or using his photograph, likeness, and biometric information and identifiers.

11 14. As a result of Clearview's unauthorized collecting, capturing,
12 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,
13 rediscovering, disseminating, or otherwise profiting from or using Plaintiff Burke's
14 photograph, likeness, and biometric information and identifiers, Plaintiff Burke
15 was deprived of his control over that valuable and sensitive information. By
16 depriving him of his control over this valuable information, Clearview
17 misappropriated the value of his photograph, likeness, and biometric information
18 and identifiers. Clearview has unlawfully profited therefrom. Plaintiff Burke has
19 further suffered damages in the diminution in value of his sensitive biometric
20 information and identifiers – information which is now at higher risk of privacy
21 violations.

Plaintiff James Pomerene

23 15. Plaintiff James (aka "Jim") Pomerene is a natural person and over the
24 age of eighteen. Plaintiff Pomerene is, and at all relevant times has been, a resident
25 and citizen of Rockford, Illinois.

26 16. Throughout the relevant period of this Complaint, photographs that
27 include images of Plaintiff Pomerene's face were uploaded to various internet-

1 based platforms and websites, including Facebook, Twitter, Instagram, Google,
2 Venmo, and/or YouTube.

3 17. Based on information and belief, Clearview “scraped” images of
4 Plaintiff Pomerene’s face from internet-based websites, in violation of several of
5 the websites’ terms of use and stored them in its database. Based on information
6 and belief, in order to scrape Plaintiff Pomerene’s image, Clearview’s web scraper
7 harvested information stored on servers in various states, including California and
8 Illinois. Clearview also targeted companies that are at home in the state of
9 California to perform its unlawful scraping. Clearview’s software application then
10 applied facial recognition software to the images of Plaintiff Pomerene’s face,
11 calculated his unique physical characteristics, and generated a biometric template
12 therefrom. Clearview generated biometric information (a Faceprint) enabling the
13 identification of Plaintiff Pomerene, in direct violation of the laws identified in this
14 Complaint, including the BIPA and CCPA. Clearview then sold, marketed,
15 advertised or otherwise made commercial use of access to its database containing
16 Plaintiff Pomerene’s photograph and Faceprint to third-party entities throughout
17 the United States generally, and in the states of California and Illinois particularly,
18 for a commercial monetary gain in an amount to be determined at trial.

19 18. Plaintiff Pomerene never consented, agreed, or gave permission –
20 written or otherwise – to Clearview to collect, capture, purchase, receive through
21 trade, obtain, sell, lease, trade, disclose, redisclose, disseminate, or otherwise profit
22 from or use his photograph, likeness, and biometric information and identifiers.
23 Likewise, Clearview never informed Plaintiff Pomerene by written notice or
24 otherwise that Plaintiff Pomerene could prevent Clearview from collecting,
25 capturing, purchasing, receiving through trade, obtaining, selling, leasing, trading,
26 disclosing, redisclosing, disseminating, or otherwise profiting from or using his
27 photograph, likeness, and biometric information and identifiers. Similarly,
28 Plaintiff Pomerene was never provided with an opportunity to prohibit or prevent

1 Clearview from collecting, capturing, purchasing, receiving through trade,
2 obtaining, selling, leasing, trading, disclosing, rediscovering, disseminating, or
3 otherwise profiting from or using his photograph, likeness, and biometric
4 information and identifiers.

5 19. As a result of Clearview’s unauthorized collecting, capturing,
6 purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing,
7 rediscovering, disseminating, or otherwise profiting from or using Plaintiff
8 Pomerene’s photograph, likeness, and biometric information and identifiers,
9 Plaintiff Pomerene was deprived of his control over that valuable and sensitive
10 information. By depriving him of his control over this valuable information,
11 Clearview misappropriated the value of his photograph, likeness, and biometric
12 information and identifiers. Clearview has unlawfully profited therefrom. Plaintiff
13 Pomerene has further suffered damages in the diminution in value of his sensitive
14 biometric information and identifiers – information which is now at higher risk of
15 privacy violations.

Defendant Clearview AI, Inc.

17 20. Defendant Clearview AI, Inc., is a private, for-profit Delaware
18 Corporation, with its principal place of business located in New York, New
19 York. Clearview markets, advertises, sells, and otherwise makes commercial use
20 of its product throughout the United States, including in California, Illinois, New
21 York and many other States. Based on information and belief, Clearview illicitly
22 scraped the images of faces of billions of consumers from websites and platforms
23 owned and operated by Illinois and California-based companies. Defendants are
24 unlawfully using the biometric information, identifiers, and likeness of residents
25 from all U.S. states, in California and Illinois. In other words, even though
26 residents from U.S. states other than California and Illinois do not reside in
27 California or Illinois, they are being specifically harmed by Defendants' conduct
28 in California and Illinois in multiple ways, including: (a) Defendants illicitly

scraping images of their faces from servers in California and Illinois (among other states); and (b) Defendants unlawfully selling, using, or otherwise disclosing their biometric information, identifiers, and likeness to business entities in California and Illinois (among other states), who are then also violating some of the laws at issue in this Complaint. As such, Defendants have intentionally availed themselves of the laws and markets of this District through the use, promotion, sale, and/or distribution of the unlawful products and services at issue in this Complaint – not just for Plaintiff Burke and California residents, but for all residents across the United States, including Plaintiff Pomerene and Illinois residents.

21. Defendant Clearview is a “private entity” within the meaning of the BIPA, which defines “private entity” as “any individual, partnership, corporation, [etcetera] … however organized.” 740 ILCS 14/10. Based on information and belief, Clearview is also a “business” within the meaning of the CCPA because: (i) it is a corporation; (ii) it operates for a profit or financial benefit of its shareholders or other owners; (iii) it does business in the State of California; (iv) it collects “consumers’ personal information” and determines the purposes and means of the processing of consumers’ personal information; and (v) it derives 50 percent or more of its annual revenues from selling consumers’ personal information and/or its sells and/or shares for commercial purposes, alone or in combination, the personal information of 50,000 or more consumers. Defendant Clearview is also a “person” within the meaning of California’s commercial misappropriation statute, Civil Code §3344. As set forth below, Plaintiffs, individually and on behalf of the Class, bring Counts I-IV against Clearview.

Defendant Hoan Ton-That

22. Defendant Hoan Ton-That is a founder and Chief Executive Officer of Clearview. Defendant Ton-That is a “private entity” within the meaning of the BIPA, which defines “private entity” as “any individual, partnership, corporation, [etcetera] … however organized.” 740 ILCS 14/10. Defendant Ton-That is also a

“person” within the meaning of California’s commercial misappropriation statute, Cal. Civ. Code §3344.

3 23. As a founder and owner of Clearview, Defendant Ton-That knew of,
4 participated in, consented to, approved, authorized, and directed the wrongful acts
5 alleged in this Complaint. Based on information and belief, Defendant Ton-That
6 conspired with Clearview and its other owners/shareholders, officers, and/or
7 directors, including, without limitation, Defendant Richard Schwartz, to carry out
8 the illegal scheme alleged in this Complaint. As set forth below, Plaintiffs bring
9 Counts I, II and IV against Defendant Ton-That.

Defendant Richard Schwartz

1 24. Defendant Richard Schwartz is a founder and, based on information
2 and belief, an officer, director and/or principal of Clearview. Defendant Schwartz
3 is a “private entity” within the meaning of the BIPA, which defines “private entity”
4 as “any individual, partnership, corporation, [etcetera] ... however organized.”
5 740 ILCS 14/10. Defendant Schwartz is also a “person” within the meaning of
6 California’s commercial misappropriation statute, Cal. Civ. Code §3344.

17 25. As a founder and officer, director, and/or principal of Clearview,
18 Defendant Schwartz knew of, participated in, consented to, approved, authorized,
19 and directed the wrongful acts alleged in this Complaint. Based on information
20 and belief, Defendant Schwartz conspired with Clearview and its other
21 owners/shareholders, officers, and/or directors, including, without limitation,
22 Defendant Hoan Ton-That, to carry out the illegal scheme alleged in this
23 Complaint. As set forth below, Plaintiffs bring Counts I, II and IV against all
24 Defendants.

25 26. The true names and capacities of defendants sued herein as Does 1
26 through 10, inclusive, are presently not known to Plaintiffs, who therefore sue
27 these defendants by such fictitious names. Plaintiffs will seek to amend this
28 complaint and include these Doe Defendants true names and capacities when they

are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiffs and The Class.

Defendants Conspired Amongst Themselves and With Others to Carry Out the Unlawful Scheme

27. Defendants conspired amongst themselves and, based on information and belief, with the other owners, directors, officers, and/or shareholders of Clearview (the “Co-Conspirators”), to carry out the unlawful scheme, including the intentional torts. Defendants and the Co-Conspirators knew and/or had reason to know about Clearview’s primary business function, which was to scrape the internet for images of faces, use facial recognition technology to generate biometric information and identifiers, and sell access of the same to third-party entities and agencies, without the consent of the consumers whose photographs, likenesses, and biometric information and identifiers were being used. Defendants and the Co-Conspirators agreed to this business plan – a plan, which when carried out, violated several laws, including, *inter alia*, the BIPA and California’s Commercial Misappropriation statute. Defendants and the Co-Conspirators intended to profit from the primary, albeit unlawful, business plan of Clearview.

28. Defendants each had knowledge of the unlawful business purpose, consented to and authorized the fulfillment of the unlawful business purpose, and directed and otherwise carried out the unlawful business purpose of the unauthorized collecting, capturing, purchasing, receiving through trade, obtaining, selling, leasing, trading, disclosing, redisclosing, disseminating, or otherwise profiting from and/or using Plaintiffs' and the Class's photographs, likenesses, and biometric information and identifiers without their consent.

29. Each of the Co-Conspirators are responsible as joint tortfeasors for all damages ensuing from the wrongful conduct carried out by Defendants. Each

1 member of the conspiracy is liable for all acts done by others pursuant to the
2 conspiracy, and for all damages caused thereby.

3 **FACTUAL ALLEGATIONS**

4 **Biometrics and Privacy**

5 30. “Biometrics” refers to technologies used to identify an individual
6 based on unique physical characteristics, *e.g.*, “face geometry.” Throughout the
7 last several years, companies have developed facial recognition technology, which
8 works by scanning an image for human faces, extracting facial feature data from
9 the image, generating a “faceprint” through the use of facial-recognition
10 algorithms, and then comparing the resultant faceprint to other faceprints stored in
11 a database. If a match is found, a person may be identified, including sensitive and
12 confidential information about that person.

13 31. This technology has raised serious privacy concerns about its massive
14 scope and surreptitiousness. For example, in 2011, Google’s Chairman at the time
15 said it was a technology the company held back on because it could be used “in a
16 very bad way.” U.S. Senator Markey recognized that widespread use of the
17 technology “could facilitate dangerous behavior and could effectively destroy
18 individuals’ ability to go about their daily lives anonymously.”

19 32. The Illinois Legislature has acknowledged that the “full ramifications
20 of biometric technology are not fully known.” 740 ILCS 14/5(f). It is known,
21 however, that the “public welfare, security, and safety will be served by regulating
22 the collection, use, safeguarding, handling, storage, retention, and destruction of
23 biometric identifiers and information.” 740 ILCS 14/5(g).

24 33. “Biometrics are unlike other unique identifiers that are used to access
25 finances or other sensitive information.” 740 ILCS 14/5(c). “For example, social
26 security numbers, when compromised, can be changed.” *Id.* “Biometrics, however,
27 are unique to the individual; therefore, once compromised, the individual has no

1 recourse ... [and] is at heightened risk for identity theft” *Id.* Recognizing this
 2 problem, the Federal Trade Commission urged companies using facial recognition
 3 technology to ask for consent ***before*** scanning and extracting biometric data from
 4 photographs.³ This prevailing view has been adopted by both the BIPA and the
 5 CCPA, which require notice to and consent from the person who’s biometric
 6 identifier or information is being used. Unfortunately, Clearview could care less
 7 about the prevailing view or these laws and failed to obtain user consent before
 8 launching its widespread facial recognition program and continues to violate
 9 millions of California and Illinois residents’ legal privacy rights.

10 **California’s Consumer Privacy Act of 2018 (via UCL)**

11 34. Under the CCPA, a “business that collects a consumer’s personal
 12 information shall, ***at or before*** the point of collection, inform consumers as to the
 13 categories of personal information to be collected and the purposes for which the
 14 categories of personal information shall be used.” Cal. Civ. Code §1798.100(b).
 15 “A business shall not collect additional categories of personal information or use
 16 personal information collected for additional purposes without providing the
 17 consumer with notice consistent with this section.” *Id.*

18 35. The statute defines “personal information” as any “information that
 19 identifies, relates to, describes, is reasonably capable of being associated with, or
 20 could reasonable be linked, directly or indirectly, with a particular consumer or
 21 household.” Cal. Civ. Code §1798.140(o)(1). Personal information includes, but
 22 is not limited to, “[b]iometric information.” Cal. Civ. Code §1798.140(o)(1)(E).
 23 “‘Biometric information’ means an individual’s physiological, biological, or
 24 behavioral characteristics, including an individual’s deoxyribonucleic acid

25
 26 3 See *Facing Facts: Best Practices for Common Uses of Facial Recognition*
 27 *Technologies*, Federal Trade Commission (Oct. 2012), available at
 28 <https://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies/121022facialtechrpt.pdf>.

1 (DNA), that can be used, singly or in combination with each other or with other
2 identifying data, to establish individual identity.” Cal. Civ. Code §1798.140(b).
3 “Biometric information includes, but is not limited to, imagery of the iris, retina,
4 fingerprint, *face*, hand, [etcetera] … from which an identifier template, such as a
5 faceprint … can be extracted” *Id.* (emphasis added).

6 **Illinois’s Biometric Information Privacy Act (“BIPA”)**

7 36. The BIPA was enacted in 2008. Under the BIPA, companies may not
8 “collect, capture, purchase, receive through trade, or otherwise obtain a person’s
9 or a customer’s biometric identifier … unless it first:

- 10 (1) informs the subject … in writing that a biometric identifier … is being
11 collected or stored;
12 (2) informs the subject … in writing of the specific purpose and length
13 of term for which a biometric identifier … is being collected, stored, and
14 used; and
15 (3) receives a written release executed by the subject of the biometric
16 identifier”

17 740 ILCS 14/15(b).

18 37. The statute defines “biometric identifier” to include “retina or iris
19 scan, fingerprint, voiceprint, or scan of hand or *face geometry*.” 740 ILCS 14/10.
20 “Biometric Information” means any information, regardless of how it is captured,
21 converted, stored, or shared, based on an individual’s biometric identifier used to
22 identify an individual.” *Id.*

23 38. The BIPA also regulates how companies acting within Illinois must
24 handle biometric identifiers and information. *See* 740 ILCS 14/15(c)-(d). For
25 example, the law prohibits selling, leasing, trading, or otherwise profiting from a
26 person’s biometric data. 704 ILCS 14/15(c). The BIPA also requires companies
27 like Clearview to develop a publicly available written policy establishing a
28 retention schedule and guidelines for permanently destroying biometric data. 740
ILCS 14/15(a).

1 Clearview Knowingly and Intentionally Violated the BIPA and CCPA

2 39. As explained below, Defendants unlawfully collected, captured,
3 purchased, received through trade, obtained, sold, leased, traded, disclosed,
4 rediscovered, disseminated, and/or otherwise profited from or used Plaintiffs' and
5 The Class's photographs and biometric information and identifiers in violation of
6 the CCPA, BIPA, and California's law against Commercial Misappropriation.
7 Clearview has been described by the media as the "secretive company that might
8 end privacy as we know it."⁴

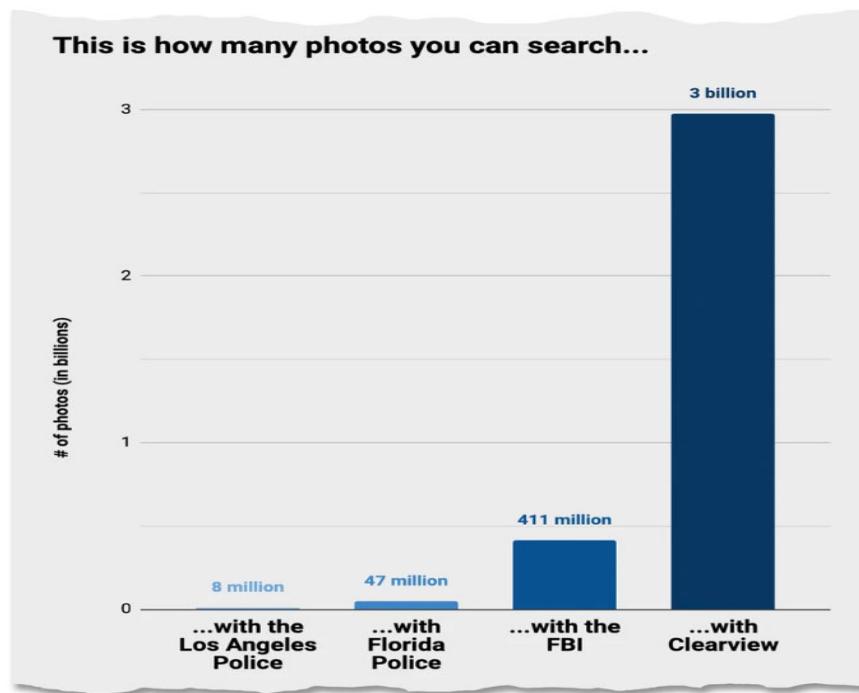
9 40. Clearview uses a software application to illicitly and secretly scrape
10 billions of images from websites such as Twitter, Facebook, Venmo, Google,
11 Instagram, and YouTube, in violation of many of the websites' policies. Indeed,
12 companies such as Facebook and Twitter have sent Clearview cease and desist
13 letters. Based on information and belief, Clearview's web scraping software
14 accesses data, which includes the photographs and likenesses of Plaintiffs and
15 Class members, stored on servers within California and throughout the United
16 States.

17 41. Clearview's software application then applies facial recognition
18 software to the illicitly scraped images, whereby the company uses artificial
19 intelligence algorithms to scan the facial geometry of faces in the images. The
20 algorithm calculates an individual face's unique physical characteristics, which
21 result in a biometric template that is separate and distinct from the image from
22 which it was created. Clearview describes the technology as a "state-of-the-art
23 neural net" to convert all images into mathematical formulas, or "vectors," based
24 on facial geometry – like how far apart a person's eyes are. This process generates
25 biometric information enabling the identification of the individuals in the images

27 ⁴ See, e.g., Hill, Kashmir (2020-01-18). "The Secretive Company That Might
28 End Privacy as We Know It." *The New York Times*, ISSN 0362-4331, retrieved
Jan. 18, 2020; updated Feb. 10, 2020.

1 (herein referred to as individuals' Faceprint), in direct violation of the BIPA and
 2 CCPA. Defendants engage in this process without notifying any of the individuals
 3 whose images Clearview has captured, converted into a Faceprint, stored, and
 4 shared for a profit. Defendants certainly have not obtained these individuals'
 5 consent – written or otherwise.

6 42. Once Defendants generate the biometric information for millions of
 7 people, Clearview sells access to the database to law enforcement agencies and
 8 private companies. Instead of having limited photo arrays, agencies and private
 9 companies are now able to use Clearview's database of three billion photos:



43. Based on information and belief, very few individuals have been arrested, much less convicted, using Clearview's database. Yet, these agencies and private companies have instantaneous access to the biometric information of billions of people allowing them to peep into almost every aspect of their digital lives, including who they associate with, where they live, etcetera

44. It has also been reported that Defendants have real-time access to monitor which individuals the law enforcement agencies are searching for. For example, an investigative journalist from *The New York Times* who was doing a

1 story on Clearview had a law enforcement agency upload images of his face and
2 run it through Clearview's application. Soon thereafter, the agency received calls
3 from Clearview asking if it was talking to the media – a clear sign Clearview has
4 the ability and appetite to monitor whom law enforcement is searching for.

5 45. In addition, based on information and belief, the computer code
6 underlying Clearview's software application includes programmable language to
7 enable it to pair with augmented reality glasses. This tool potentially enables any
8 user wearing the glasses to identify in real-time every person they see as they walk
9 down the street, potentially revealing not just their names, but where they live,
10 what they like to do, and who they know and associate with.

11 46. Moreover, it has been shown that Clearview cannot adequately
12 safeguard the biometric information and identifiers of Plaintiffs and The Class. On
13 February 26, 2020, it was publicly reported that there was a data breach of
14 Clearview's data storage servers, which compromised the privacy and security of
15 every person whose image Clearview had scraped and used to generate biometric
16 identifiers.

17 47. The result of Clearview's technology is not a safer society by
18 enabling law enforcement access to a broader database from which can lead to the
19 capture of criminals. The result is a profit machine for a single company that relies
20 on the secret use of individual's biometric information. This is a radical evasion
21 and erosion of privacy. Defendants are laying the groundwork for a dystopian
22 future and violating, *inter alia*, the BIPA and CCPA in the process.

CLASS ACTION ALLEGATIONS

24 48. Plaintiffs reallege and incorporate herein by reference each allegation
25 in the preceding and subsequent paragraphs.

26 49. Plaintiffs bring this action individually and on behalf of a class of
27 similarly situated individuals pursuant to Rule 23 of the Federal Rules of Civil
28 Procedure.

1 50. As used herein, the following terms have the meanings set forth
2 below:

3 (a) “California Biometric Information” means an “individual’s
4 physiological, biological, or behavioral characteristics, including an individual’s
5 deoxyribonucleic acid (DNA), that can be used, singly or in combination with each
6 other or with other identifying data, to establish individual identity” as defined
7 under CCPA, Cal. Civ. Code §1798.140(b).

8 (b) “Illinois Biometric Information” means “any information,
9 regardless of how it is captured, converted, stored, or shared, based on an
10 individual’s biometric identifier used to identify an individual” as defined in the
11 BIPA, 740 ILCS 14/10.

12 (c) “Photograph” means “any photographic or photographic
13 reproduction, still or moving, or any videotape or live television transmission, of
14 any person, such that the person is identifiable” as defined by California Civil
15 Code §3344(b).

16 51. Plaintiffs seek to represent the following classes of persons:

17 (a) **Sub-Class One (the “Commercial Misappropriation
18 Class”) (Cal. Civ. Code §3344):**

19 All persons in the United States who had their Photograph or likeness
20 knowingly used by Clearview, without those persons’ consent, for
commercial gain within the state of California.

21 (b) **Sub-Class Two (the “BIPA Class”) (740 ILCS 14/1, *et seq.*):**

22 All persons in the United States who had their Illinois Biometric
23 Information collected, captured, purchased, received, obtained, sold,
24 leased, traded, disclosed, redisclosed, disseminated, and/or otherwise
profited from and/or used by Clearview without their consent.

52. Plaintiff Burke seeks to represent the following classes of persons:

(a) Sub-Class Three (the “CCPA Class”) (Cal. Civ. Code §1798.100, *et seq*):

All persons who, while residing in California, had their California Biometric Information collected and/or used by Clearview without prior notice by Clearview and without their consent.

(b) Sub-Class Four (the “Unjust Enrichment Class”):

All persons who, while residing in California, had their California Biometric Information misappropriated by Clearview from which Clearview was unjustly enriched.

53. Collectively, the four sub-classes are herein referred to as "The Class."

54. Excluded from The Class are Defendants, their officers and directors, families, owners, and legal representatives, heirs, successors, or assigns, and any entity in which Clearview have a controlling interest, and any Judge assigned to this case and their immediate families.

55. Plaintiffs reserve the right to amend or modify the class definition in connection with their motion for class certification, as a result of discovery, at trial, or as otherwise allowed by law.

56. Plaintiffs bring this action individually and on behalf of all others similarly situated because there is a well-defined community of interest in the litigation and the proposed sub-classes are easily ascertainable.

Numerosity

57. The potential members of The Class, and each of the four sub-classes independently, are so numerous joinder of all the members is impracticable. While the precise number of members of The Class, or each of the four sub-classes, has not been determined, Plaintiffs are informed and believe The Class, and each of

1 the four-sub classes, include at least thousands (and potentially even millions) of
2 individuals.

3 58. Based on information and belief, Clearview's records evidence the
4 number and location of The Class, and each of the four sub-classes, respectively.

5 **Commonality and Predominance**

6 59. There are questions of law and fact common to The Class that
7 predominate over any questions affecting only individual class members. These
8 common questions of law and fact include, without limitation:

9 (a) Whether Clearview collected, captured, received, or otherwise
10 obtained Plaintiffs' and the BIPA Class's Illinois Biometric Information;

11 (b) Whether Clearview has sold, leased, traded, or otherwise
12 profited from Plaintiffs' and the BIPA Class's Illinois Biometric Information;

13 (c) Whether Clearview disclosed, redisclosed, or otherwise
14 disseminated Plaintiffs' and the BIPA Class's Illinois Biometric Information;

15 (d) Whether Clearview properly informed Plaintiffs and the BIPA
16 Class that it collected, captured, purchased, received, obtained, sold, leased,
17 traded, disclosed, redisclosed, disseminated, and/or otherwise profited from and/or
18 used their Illinois Biometric Information;

19 (e) Whether Clearview obtained a written release (as defined in
20 740 ILCS 14/10) from Plaintiffs and the BIPA Class to collect, capture, or
21 otherwise obtain their biometric identifiers;

22 (f) Whether Clearview made publicly available to Plaintiffs and
23 the BIPA Class, a written policy establishing a retention schedule and guidelines
24 for permanently destroying Illinois Biometric Information in compliance with the
25 BIPA;

26 (g) Whether Clearview's violations of the BIPA were committed
27 intentionally, recklessly, or negligently;

(h) Whether Clearview collected and/or used Plaintiff Burke's and the CCPA Class's California Biometric Information without first providing notice of such collection and/or use;

(i) Whether Clearview knowingly used Plaintiff Burke's Photograph and/or the likeness of Plaintiffs and the Commercial Misappropriation Class for commercial gain without their consent;

(j) Whether Clearview was unjustly enriched by the misappropriation of Plaintiff Burke's and the Unjust Enrichment Class's California Biometric Information;

(k) Whether Defendants conspired for the purpose of accomplishing some concerted action either an unlawful purpose or lawful purpose by unlawful means; and

(l) Whether Plaintiffs and The Class have been harmed and the proper measure of relief.

Typicality

60. The claims of Plaintiffs are typical of the claims of The Class. Plaintiffs and all members of The Class sustained injuries and damages arising out of and caused by Clearview's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

Adequacy of Representation

61. Plaintiffs will fairly and adequately represent and protect the interests of The Class. Counsel who represents Plaintiffs are competent and experienced in litigating large consumer class actions.

Superiority of Class Action

62. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of The Class is not practicable, and questions of law and fact common to The Class predominate over

any questions affecting only individual members of The Class. Each member of The Class has been damaged and is entitled to recovery because of Clearview's uniform unlawful policy and/or practices described herein. There are no individualized factual or legal issues for the court to resolve that would prevent this case from proceeding as a class action. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I

Unlawful and Unfair Business Practices

In Violation of Bus. & Prof. Code §17200, *et seq.*

(On Behalf of Plaintiff Burke, Plaintiffs, the CCPA Class, and the Commercial Misappropriation Class against All Defendants)

63. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the paragraphs above, as if fully set forth herein.

64. Defendants engaged in unlawful activity prohibited by the UCL. The actions of Defendants as alleged within this Complaint constitute unlawful and unfair business practices with the meaning of the UCL.

65. Defendants have conducted the following unlawful activities:

(a) Violations of the CCPA, Civil Code §1798.100(b) (Defendant Clearview); and

(b) Violations of Commercial Misappropriation, Civil Code §3344(a) (all Defendants).

66. The statutory requirements for Commercial Misappropriation under Civil Code §3344, including how Defendants violated that law, are set forth in detail in Count II herein below.

67. With respect to Clearview's violation of the CCPA, a "business that collects a consumer's personal information shall, at or before the point of

1 collection, inform consumers as to the categories of personal information to be
2 collected and the purposes for which the categories of personal information shall
3 be used.” Cal. Civ. Code §1798.100(b). “A business shall not collect additional
4 categories of personal information or use personal information collected for
5 additional purposes without providing the consumer with notice consistent with
6 this section.” *Id.*

7 68. The CCPA defines “personal information” as any “information that
8 identifies, relates to, describes, is reasonably capable of being associated with, or
9 could reasonable be linked, directly or indirectly, with a particular consumer or
10 household.” Cal. Civ. Code §1798.140(o)(1). Personal information includes, but
11 is not limited to, “[b]iometric information.” Cal. Civ. Code §1798.140(o)(1)(E).
12 “Biometric information’ means an individual’s physiological, biological, or
13 behavioral characteristics, including an individual’s deoxyribonucleic acid
14 (DNA), that can be used, singly or in combination with each other or with other
15 identifying data, to establish individual identity.” Cal. Civ. Code §1798.140(b).
16 “Biometric information includes, but is not limited to, imagery of the iris, retina,
17 fingerprint, *face*, hand, [etcetera] … from which an identifier template, such as a
18 faceprint … can be extracted” *Id.* (emphasis added).

19 69. As set forth in detail elsewhere in this Complaint, Clearview collected
20 Plaintiff Burke’s and the CCPA Class’s “personal information” as defined in the
21 CCPA and failed to inform Plaintiff Burke and the CCPA Class of the same at or
22 before the point of collection. Accordingly, Clearview violated the CCPA.
23 Clearview also engaged in Commercial Misappropriation as detailed in Count II
24 herein below.

25 70. In addition to constituting “unlawful conduct” in violation of the
26 above-noted laws, Clearview’s activities also constitute unfair practices in
27 violation of the UCL because Clearview’s practices violate an established public
28 policy, and/or the practice is immoral, unethical, oppressive, unscrupulous, and

1 substantially injurious to Plaintiff Burke, the CCPA Class, and the Commercial
2 Misappropriation Class.

3 71. Because of Defendants' violations of the identified laws, Plaintiff
4 Burke, the CCPA Class, and the Commercial Misappropriation Class have
5 suffered injury-in-fact and have lost money or property. Plaintiff Burke, the CCPA
6 Class, and the Commercial Misappropriation Class are entitled to restitution,
7 restitutionary disgorgement, an injunction, declaratory, and other equitable relief
8 against such unlawful practices to prevent future harm for which there is no
9 adequate remedy at law.

10 72. As a direct and proximate result of the unfair business practices of
11 Defendants, Plaintiff Burke, the CCPA Class, and the Commercial
12 Misappropriation Class are entitled to equitable and injunctive relief, including
13 restitutionary disgorgement of the value of Plaintiff Burke's, the CCPA Class's,
14 and the Commercial Misappropriation Class's California Biometric Information
15 and Photographs and/or likeness which have been unlawfully misappropriated by
16 Clearview. Defendants should be enjoined and cease and desist from engaging in
17 the practices described herein for the maximum time permitted pursuant to
18 California Business & Professions Code §17208, including any tolling.

19 73. The unlawful and unfair conduct alleged herein is continuing, and
20 there is no indication that Defendants will refrain from such activity in the future.
21 Plaintiffs believe and allege that if Defendants are not enjoined from the conduct
22 set forth in this Complaint, they will continue to violate California's and Illinois's
23 laws. Plaintiffs further requests that the Court issue a preliminary and permanent
24 injunction.

25 74. Plaintiffs are also entitled to and hereby claims attorneys' fees and
26 costs, pursuant to the private attorney general theory doctrine (Code of Civil
27 Procedure §1021.5), and any other applicable provision for attorney fees and costs,
28 based upon the violation of the underlying public policies.

COUNT II
Commercial Misappropriation
In Violation of California Civil Code §3344(a)
(On Behalf of Plaintiffs and The Commercial Misappropriation Class
against All Defendants)

75. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the paragraphs above, as if fully set forth herein.

76. Pursuant to California Civil Code §3344(a) it is unlawful for any person to knowingly use “another’s name, voice, signature, photograph, or likeness, in any manner ... without such person’s prior consent”

77. Any person who violates this section shall be liable to the injury party or parties “in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages.” Civil Code §3344(a); *See Orthopedic Systems, Inc. v. Schlein*, 202 Cal. App. 4th 529, 547 (2011) (“We hold that under section 3344(a), an injured party may recover either the amount of damages specified in the statute or actual damages, whichever is greater, as well as profits from the unauthorized use.”).

78. Plaintiffs and the Commercial Misappropriation Class had Photographs (as defined in Civil Code §3344(b)) posted to various websites on the internet, including on Facebook, Twitter, Google, Instagram, Venmo, and YouTube, under the terms and conditions governing those sites.

79. Without providing notice to, and/or obtaining consent from, Plaintiffs and the Commercial Misappropriation Class, Defendants knowingly and illicitly obtained Photographs and likenesses of Plaintiffs and the Commercial Misappropriation Class by scraping the internet in violation of many of the websites' policies which prohibited such conduct. Without notice to, and/or consent from, Plaintiffs and the Misappropriation Class, Defendants knowingly

used their Photographs and likenesses to Defendants' advantage by selling access to them to third-party entities within the state of California for a commercial gain.

80. The use of Plaintiffs and the Commercial Misappropriation Class's Photographs and likenesses by Defendants did not have any connection with any news, public affairs, sports broadcast or account, or any political campaign.

81. ““Shareholders, officers, and directors of corporations”” may be ““held personally liable for intentional torts when they knew or had reason to know about but failed to put a stop to tortious conduct.”” *Asahi Kasei Pharma Corp. v. Actelion Ltd.*, 222 Cal. App. 4th 945, 966 (2013) (internal citation omitted). In addition, all persons ““who are shown to have participated in an intentional tort are liable for the full amount of the damages suffered.”” *Id.* Defendants Hon-That and Schwartz knew of, consented to, directed, and/or authorized the tortious conduct and failed to put a stop to it.

82. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Commercial Misappropriation Class have been harmed in an amount to be proven at the time of trial.

83. Plaintiffs are also entitled to claim recovery of costs and reasonable attorneys' fees pursuant to Civil Code §3344(a).

COUNT III
Unjust Enrichment / Restitution
(On Behalf of Plaintiff Burke and The Unjust Enrichment Class
against Defendant Clearview)

84. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the paragraphs above, as if fully set forth herein.

85. Clearview was unjustly enriched by its unlawful misappropriation of Plaintiff Burke’s and the Unjust Enrichment Class’s California Biometric Information, Photographs, and likeness. Through its unlawful conduct, Clearview received and retained a benefit it otherwise would not have achieved. By depriving Plaintiff Burke and the Unjust Enrichment Class of control over their valuable

1 Biometric Information, Clearview took control of and misappropriated the value
2 of their California Biometric Information. Clearview's conduct also exposed
3 Plaintiff Burke and the Unjust Enrichment Class to a heightened risk of an invasion
4 of their privacy.

5 86. There is not another adequate remedy at law. It would be unjust and
6 unfair for Clearview to retain any of the benefits obtained from its unlawful
7 misappropriation of Plaintiff Burke's and the Unjust Enrichment Class's
8 California Biometric Information.

9 87. Clearview should be ordered to disgorge the proceeds that it unjustly
10 received from the misappropriation of Plaintiff Burke's and the Unjust Enrichment
11 Class's California Biometric Information.

COUNT IV
Violation of the BIPA
740 ILCS §14/1, *et seq.*

(On Behalf of Plaintiffs and the BIPA Class against All Defendants)

88. Plaintiffs hereby reallege and incorporate by reference the allegations contained in the paragraphs above, as if fully set forth herein.

17 ||| 89. Defendants violated the following sections of the BIPA:

- (a) 740 ILCS 14/15(a);
 - (b) 740 ILCS 14/15(b);
 - (c) 740 ILCS 14/15(c); and
 - (d) 740 ILCS 14/15(d).

22 90. Section 15(a) of the BIPA requires that any “private entity in
23 possession of biometric identifiers or biometric information must develop a written
24 policy, made available to the public, establishing a retention schedule and
25 guidelines for permanently destroying biometric identifiers and biometric
26 information when the initial purpose for collecting or obtaining such identifiers or
27 information has been satisfied or within 3 years of the individual’s last interaction
28 with the private entity, whichever occurs first.” 740 ILCS 14/15(a).

1 91. Section 15(b) of the BIPA makes it unlawful for any private entity to,
2 among other things, “collect, capture, purchase, receive through trade, or
3 otherwise obtain a person’s or a customer’s biometric identifier or biometric
4 information, unless it first: (1) informs the subject ... in writing that a biometric
5 identifier or biometric information is being collected or stored; (2) informs the
6 subject ... in writing of the specific purpose and length of term for which a
7 biometric identifier or biometric information is being collected, stored, and used;
8 and (3) receives a written release executed by the subject of the biometric identifier
9 or biometric information” 740 ILCS 14/15(b).

10 92. Section 15(c) of the BIPA makes it unlawful for any private entity to,
11 among other things, “sell, lease, trade, or otherwise profit from a person’s or a
12 customer’s biometric identifier or biometric information.” 740 ILCS 14/15(c).

13 93. Section 15(d) of the BIPA makes it unlawful for any private entity to,
14 among other things, “disclose, redisclose, or otherwise disseminate a person’s or
15 a customer’s biometric identifier or biometric information unless: (1) the subject
16 of the biometric identifier or biometric information ... consents to the disclosure
17 or redisclosure; (2) the disclosure or redisclosure completes a financial transaction
18 requested by the subject of the biometric identifier or the biometric information
19 ...; (3) the disclosure or redisclosure is required by State or federal law or
20 municipal ordinance; or (4) the disclosure is required pursuant to a valid warrant
21 or subpoena issued by a court of competent jurisdiction.” 740 ILCS 14/15(d).

22 94. Defendants violated Sections 15(a)-(d) of the BIPA. Preliminarily,
23 Clearview is a Delaware corporation and thus qualifies as a “private entity” under
24 the BIPA. *See* 740 ILCS 14/10. Defendants Ton-That and Schwartz are
25 “individuals” and, thus, are each a “private entity” under the BIPA. *Id.*

26 95. Plaintiffs’ and The Class’s Faceprints are “biometric identifiers” and
27 “biometric information” pursuant to 740 ILCS 14/10.

1 96. During the relevant period, Defendants did not make available to the
2 public a written policy establishing a retention schedule and guidelines for
3 permanently destroying Plaintiffs' and the BIPA Class's biometric identifiers and
4 biometric information as specified by the BIPA. *See* 740 ILCS 14/15(a). Thus,
5 Defendants violated Section (a) of the BIPA.

6 97. Defendants systematically and automatically collected, captured,
7 purchased, received, and/or otherwise obtained Plaintiffs' and the BIPA Class's
8 biometric identifiers and/or biometric information without first obtaining the
9 specific written release required by 740 ILCS 14/15(b)(3). Likewise, Defendants
10 did not properly inform Plaintiffs or the BIPA Class in writing that their biometric
11 identifiers and/or biometric information were being collected, captured,
12 purchased, received, and/or otherwise obtained, nor did it inform them in writing
13 of the specific purpose and length of term for which their biometric identifiers
14 and/or biometric information were being collected, captured, purchased, received,
15 and/or otherwise obtained as required by 740 ILCS 14/15(b)(1)-(2). Thus,
16 Defendants violated Section (b) of the BIPA.

17 98. Defendants knowingly sold, leased, traded, and/or otherwise profited
18 from Plaintiffs' and the BIPA Class's biometric identifiers and/or biometric
19 information. Thus, Defendants violated Section (c) of the BIPA.

20 99. Defendants also disclosed, redisclosed, and/or otherwise
21 disseminated Plaintiffs' and the BIPA Class's biometric identifiers and/or
22 biometric information without obtaining the consent from Plaintiffs and the BIPA
23 Class and/or their authorized representatives. The disclosure, redisclosure, and/or
24 dissemination by Defendants of Plaintiffs' and the BIPA Class's biometric
25 identifiers and/or biometric information was not to complete a financial transaction
26 requested or authorized by Plaintiffs or members of the BIPA Class, nor was the
27 disclosure and/or redisclosure required by State or federal law, municipal
28

1 ordinance, or required pursuant to a valid warrant or subpoena issued by a court of
2 competent jurisdiction. Thus, Defendants violated Section (d) of the BIPA.

3 100. Defendants Ton-That and Schwartz conspired with Clearview and the
4 Co-Conspirators to carry out the unlawful scheme set forth above. They each had
5 direct knowledge of the scheme, and consented, participated, directed, and
6 otherwise assisted in carrying out the unlawful scheme. Based on information and
7 belief, Defendants are continuing to direct and carry out the unlawful scheme.

8 101. Plaintiffs and the BIPA Class have been directly harmed by
9 Clearview's violations of Sections 14/15(a)-(d) of the BIPA. They have been
10 deprived of their control over their valuable information, and otherwise suffered
11 monetary and non-monetary losses. By depriving Plaintiffs and the BIPA Class of
12 control over their valuable information, Defendants misappropriated the value of
13 their biometric identifiers and/or biometric information. Based on information and
14 belief, Defendants have profited from its unlawful conduct.

15 102. On behalf of Plaintiffs and the BIPA Class, Plaintiffs seek: (i)
16 injunctive and equitable relief as necessary to protect the interests of Plaintiffs and
17 the BIPA Class by requiring Defendants to comply with the BIPA's requirements;
18 (ii) statutory damages of \$5,000 per intentional or reckless violation of the BIPA
19 pursuant to 740 ILCS 14/20(2) and statutory damages of \$1,000 per negligent
20 violation of the BIPA pursuant to 740 ILCS 14/20(1); and (iii) reasonable
21 attorneys' fees and costs and other litigation expenses pursuant to 740 ILCS
22 14/20(3).

23 PRAYER FOR RELIEF

24 Wherefore, Plaintiffs, individually and on behalf of The Class, respectfully
25 request that this Court enter an Order:

26 A. Certifying this case as a class action on behalf of the four sub-
27 classes defined above, appointment of the named Plaintiffs as the representatives
28 of The Class, and appointing their counsel as Class Counsel;

1 B. Declaring that Defendants' actions, as set out above, violate the
2 BIPA, 740 ILCS 14/1, *et seq.*;

3 C. Declaring that Clearview's actions, as set out above, violate the
4 CCPA, Cal. Civ. Code §1798.100, *et seq.*;

5 D. Declaring that Defendants' actions, as set out above, violate
6 California's commercial misappropriation statute, Cal. Civ. Code §3344(a);

7 E. Declaring that Defendants' actions, as set out above, violate
8 California's UCL, Bus. & Prof. Code §17200, *et seq.*;

9 F. Awarding compensatory, non-compensatory, statutory,
10 exemplary, and punitive damages;

11 G. Awarding statutory damages of \$5,000 per intentional or
12 reckless violation of the BIPA pursuant to 740 ILCS 14/20(2) and statutory
13 damages of \$1,000 per negligent violation of the BIPA pursuant to 740 ILCS
14 14/20(1);

15 H. Awarding either the amount of damages specified in the statute
16 or actual damages, whichever is greater, as well as profits from the unauthorized
17 use pursuant California's commercial misappropriation statute, Cal. Civ. Code
18 §3344(a);

19 I. Awarding restitution of all monies, expenses, and costs due to
20 Plaintiffs and The Class;

21 J. Awarding restitutionary disgorgement from the unlawful and
22 unfair business practices in violation of Bus. & Prof. Code §§17200, *et seq.*;

23 K. Awarding Plaintiffs and The Class their reasonable attorneys'
24 fees, costs, and litigation expenses;

25 L. Awarding Plaintiffs and The Class pre- and post-judgment
26 interest, to the extent allowable;

M. Awarding injunctive and other equitable relief as necessary to protect the interests of The Class, including, among other things, an order requiring Defendants to comply with the BIPA and CCPA; and

N. Awarding such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiffs, individually, and on behalf of The Class, hereby demand trial by jury on all issues so triable.

Dated: April 7, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 7, 2020.

/s/Aaron M. Olsen

AARON M. OLSEN

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